

Supreme Court, U. S.

FILED

JUN 24 1976

MICHAEL ROTH, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1975

No. **75-1865**

SAM R. CARNES et al., Petitioners

v.
JOHN OWEN SMITH et al., Respondents

**PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF GEORGIA**

PAUL S. WEINER
226 North McDonough Street
P. O. Box 698
Jonesboro, Georgia 30236
(404) 471-8161

Counsel for Petitioners

PAUL McGEE
Of Counsel for Petitioners

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1975

No. 75-

SAM R. CARNES et al., Petitioners
v.
JOHN OWEN SMITH et al., Respondents

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF GEORGIA

TABLE OF CONTENTS

OPINION BELOW	1
JURISDICTION	1
QUESTION PRESENTED	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF CASE	2
REASONS FOR GRANTING THE WRIT	3
Where a deed to church property vested title in its trustees and the congregation affiliates with a general church of hierarchical polity which fails in its continuing efforts to re- quire the successor trustees to place a trust clause in favor of the general church in the deed, enforcement by civil courts of non-doctrinal provisions of the law of the general church, un- der which indicia of affiliation are employed to relate back over a period of 117 years to inform the intent of the grantor resulting in the destruction of the use he impressed on the property, infracts the establishment clause and impairs the obligation of contracts.	
CONCLUSION	10
APPENDIX A.....	App. 11
APPENDIX B.....	App. 24
APPENDIX C.....	App. 25
APPENDIX D	App. 26
APPENDIX E	App. 27

TABLE OF AUTHORITIES

<i>Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America</i> , 344 US 94 (1952)	7
<i>Maryland & Virginia Eldership of the Churches of God v. the Church of God at Sharpsburg</i> , 396 US 367 (1970).....	6,7
<i>Presbyterian Church in the United States v. Eastern Heights Presbyterian Church, 224 Ga 61 (1968) rev'd 393 US 440 (1969)</i>	2,9
<i>Presbyterian Church v. Eastern Heights Presbyterian Church</i> , 225 Ga 259 (1969), cert. den., 396 US 1041 (1970)	2
<i>Presbyterian Church in the United States v. Mary Elizabeth Hull Memorial Presbyterian Church</i> , 393 US 440 (1969).....	7
<i>Watson v. Jones</i> , 13 Wall 679 (1872)	5,6,7

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitution of the United States

<i>First Amendment</i>	2,4
<i>Fourteenth Amendment</i>	4
Statutory Provisions	
<i>Ga. Code Ann. § 22-5507</i>	2,4,5
<i>Ga. Code Ann. § 22-5508</i>	2,4,5
<i>Ga. Code Ann. § 22-5509</i>	5

i

**IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975**

No. 75-

SAM R. CARNES et al., Petitioners

v.

JOHN OWEN SMITH et al., Respondents

**PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF GEORGIA**

The Petitioners, Sam R. Carnes et al., respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Georgia entered in the proceeding on January 6, 1976.

OPINION BELOW

The opinion of the Supreme Court of Georgia is reported at 236 Ga 30, 222 SE2d 322, and appears in Appendix A, infra.

JURISDICTION

This Court's jurisdiction is invoked under Title 28 USC §1257(3). The Supreme Court of Georgia entered judgment on January 6, 1976, and denied a timely motion for rehearing on January 27, 1976. The judgment entered January 6, 1976 appears as Appendix B, infra. The order denying the motion for rehearing appears as Appendix C, infra. The direction of the Supreme Court of Georgia staying issuance of the remittitur dated January 30, 1976 appears as Appendix D, infra.

Mr. Justice Powell signed an order on April 23, 1976 extending the time in which to file a petition for writ of certiorari to and including June 25, 1976. This petition was filed within the authorized extention of time.

QUESTION PRESENTED

Where a deed to church property vested title in its trustees and the congregation affiliates with a general church of hierachial polity which fails in its continuing efforts to require the successor trustees to place a trust clause in favor of the general church in the deed, does enforcement by civil courts of non-doctrinal provisions of the law of the general

church, under which indicia of affiliation are employed to relate back over a period of 117 years to inform the intent of the grantor resulting in the destruction of the use he impressed on the property, infract the establishment clause and impair the obligation of contracts.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner's constitutional claims are grounded primarily on the First Amendment prohibition of establishment of churches, and on the Fourteenth Amendment guarantee of Due Process of law.

The statutory provisions involved are Ga Code Ann. §§22-5507, and 22-5508 which are set out in full under Reasons for Granting the Writ, infra.

STATEMENT OF CASE

This case involves competing claims to property between Petitioners who are trustees of the Noah's Ark Methodist, now Independent, Church, and the Respondents who are officials of the general church, The United Methodist Church. The facts are set out in the Opinion, Ga. at 30-31.

The church property was deeded in 1852 to named individuals as "trustees of the Methodist Episcopal church at Mount Pleasant Academy . . . their Successors in Office as such forever in fee simple.". Opinion, Ga. at 30.

The deed here was construed by the Supreme Court of Georgia as being materially indistinguishable from the deeds in *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 224 Ga 61, 159 SE2d 690 (1968) rev'd 393 US 440 (1969); *Presbyterian Church v. Eastern Heights Presbyterian Church*, 225 Ga 259, 167 SE2d 658 (1969), cert. den., 396 US 1041 (1970). Opinion, Ga. at 37. In *Presbyterian*, 225 Ga 259, the Georgia court awarded title to the local churches based on legal title in the respective deeds. Opinion, Ga. at 37.

The general church history, pertinent to interpretation of the grantor's intent, is that in 1844 the Methodist Episcopal Church separated into two connectional churches, the

Methodist Episcopal Church, and the Methodist Episcopal Church, South. (Complaint Par. 6, R. 6-7; Plaintiffs Exhibit A, *Book of Discipline*, 10). Since the deed to the Georgia realty was delivered in 1852, some 8 years after the separation, the grantor by not adding the word "South" in the phrase, "as trustees of the Methodist Episcopal Church at Mount Pleasant Academy", further expressed his intent that the property be devoted to the use of the local church independent of the Methodist Episcopal Church, South, and thus independent of organized methodism. Respondents claim title through the Methodist Episcopal Church, South, and not through the Methodist Episcopal Church.

The trustees of the local church resisted continuing efforts by the general church to require them to place a trust clause in the deed to the property. (Record 215-217, 229)

In the Superior Court of Clayton County, Georgia, both parties moved for summary judgment, which was entered for Plaintiff-Respondents, the general church, and against Defendants-Petitioners, the local church. Defendants-Petitioners were enjoined from using the local church property, from interfering with church services, and from using the name "Noah's Ark Methodist Church" or any simulation thereof. The injunctive relief was stayed pending final disposition of the case (R. 405-406).

REASONS FOR GRANTING THE WRIT

WHERE A DEED TO CHURCH PROPERTY VESTED TITLE IN ITS TRUSTEES AND THE CONGREGATION AFFILIATES WITH A GENERAL CHURCH OF HIERARCHIAL POLITY WHICH FAILS IN ITS CONTINUING EFFORTS TO REQUIRE THE SUCCESSOR TRUSTEES TO PLACE A TRUST CLAUSE IN FAVOR OF THE GENERAL CHURCH IN THE DEED, ENFORCEMENT BY CIVIL COURTS OF NON-DOCTRINAL PROVISIONS OF THE LAW OF THE GENERAL CHURCH, UNDER WHICH INDICIA OF AFFILIATION ARE EMPLOYED TO RELATE BACK OVER A PERIOD OF 117 YEARS TO INFORM

THE INTENT OF THE GRANTOR RESULTING IN
THE DESTRUCTION OF THE USE HE IMPRESSED
ON THE PROPERTY, INFRACTS THE
ESTABLISHMENT CLAUSE AND IMPAIRS THE
OBLIGATION OF CONTRACTS.

The opinion of the Supreme Court of Georgia, Ga. at 37, subsumes that Ga. Code Ann. §§ 22-5507, 22-5508 refer to the *Book of Discipline of the United Methodist Church* when a reading of these sections shows that trustees are subject to the authority of the church organization for which they hold the property in trust:

Ga. Code Ann. § 22-5507

"Conveyances to churches or religious societies confirmed. - All deeds of conveyance heretofore made, and which may hereafter be made, to any person or persons, for any lots of land within this State, to any church or religious society, for the purpose of erecting churches or meeting houses, are, and shall be deemed and taken to be, good and valid, and available in law for the intents, uses, and purposes contained in said deeds of conveyance; and all lots of land so conveyed shall be fully and absolutely vested in such church or religious society, or in their respective trustees, *for the uses and purposes in said deed expressed*; to be holden to them, or their trustees, for their use by succession, according to the mode of church government or rules of discipline exercised by such churches or religious societies respectively." (Acts 1968, pp. 565, 822.) (Emphasis Supplied)

Ga. Code Ann. § 22-5508

"*Trustees in conveyances, to what authority subject. - All trustees to whom conveyances are or shall be made; for the purposes expressed in the preceding section, shall be subject to the authority of the church or religious society for which they hold the same in trust, and may be expelled from said trust by such church or society, according to the form of government or rules of discipline by which they may be governed.*" (Acts 1968, pp. 565, 823.) (Emphasis Supplied)

Since under § 22-5508, trustees are subject to the authority of the church for which they hold the church property in trust, and since the ultimate question is for which church, local or general, do the trustees hold the church property in trust, the opinion, Ga. at 37, assumes the very question at issue in applying the constitution of the general church.

Code Ann. §§ 22-5507 and 22-5508 are derived from Ga. L. 1805 p. 250; the purpose of the Act of 1805 appears as follows: "To secure to churches or religious societies, the lots of land conveyed to them for erecting churches and meeting houses." This language suggests that the legislature intended that the Act was for the protection of local churches. Code Ann. § 22-5509 is derived in part from the second sentence of Ga. L. 1805 p. 250, 251, §2, and from Ga. L. 1884-5, p.51. A reading of § 22-5509 strongly suggests that the legislature intended the Act to apply to local churches: the proviso in § 22-5509 derived from the Act of 1884-5 refers to the form of government or discipline practiced by the church or society having the power to appoint trustees, and so identifies the applicable form of government to which §§ 22-5507 and 22-5508 refer.

Here, the trustees were appointed under the form of government of the local church. The general church did not appoint trustees nor did it ever attempt to appoint trustees. Thus, while the question is not free from all doubt, the strong tendency, in the circumstances of this case, is that the form of government referred to in §§ 22-5507 and 22-5508 is that of the local church.

In *Watson v. Jones*, 80 US 679, 20 LEd 666 (1871), the Court classified church property questions:

"The questions which have come before the civil courts concerning the rights to property held by ecclesiastical bodies may, so far as we have been able to examine them, be profitably classified under three general heads, which of course do not include cases governed by considerations applicable to a church established and supported by law as the religion of the state.

"3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete in some supreme judicatory over whole membership that general organization." Id. US 722-723. (Emphasis supplied)

Although often cited as the *Watson* definition of hierachial policy, e.g., *Maryland & Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 US 367, 368 n. 1, 90 SCt 499, LE2d (1970) (Brennan, J. concurring), *Watson* provided a further definition later in the opinion:

"But the third of these classes of cases is the one which is oftenest found in the courts, and which, with reference to the number and difficulty of the questions involved, and to other considerations, is every way the most important.

"It is the case of property acquired in any of the usual modes for the general use of a religious congregation which is itself part of a large and general organization of some religious denomination, with which it is more or less intimately connected by religious views and ecclesiastical government. Id. US at 726. (Emphasis supplied)

The US at 722-723 definition is framed from the perspective of the holding of church property by a congregation which is part of a general church organization, while the US at 726 definition is framed from the perspective of property acquired for the use of a congregation which is part of a general church organization.

In *Watson*, the property was acquired by the Walnut Street Church which upon its organization in 1842 formed a part of the Presbyterian Church of the United States known as the Old School. Id. US at 714.

Employment of the US at 722-723 definition has tended to channel analysis in terms of the organization which holds the

property diverting attention from considerations inherent in the use impressed on the property at the time of acquisition.

Utilization of the US at 722-723 definition has been central to the development of the contours of the establishment clause as delineated in *Presbyterian Church in the United States et. al. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church et. al.*, 393 US 440, 89 SCt 601, 21 LEd2d 658 (1969), and in *Sharpsburg*, supra, which afford a general church of hierachial polity the opportunity by invoking the protection given to church doctrine to enforce in civil courts overreaching non-doctrinal provisions of church law designed to destroy uses impressed on church property upon acquisition by an independent congregation which later affiliates with the general church.

The destruction of such uses through enforcement of overreaching non-doctrinal provisions of church law by civil courts intrudes the power of the State for the benefit of one segment of the church to the detriment of another, thus implicating the establishment clause. C.f. *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 US 94, 119, 73 SCt 143, 96 LEd 120 (1952).

In *Watson*, supra, US at 729, Mr. Justice Miller stated, "all who united themselves with such a body do so with an implied consent to this government and are bound to submit to it." Consistent with this statement was the fact in *Watson* the property was acquired by the Walnut Street Church which upon its organization formed a part of a general church of hierachial polity.

Here, legal title was vested in the trustees of the local church. The successor trustees and congregations expressly rejected all efforts by the general church to require the trustees to place a trust clause in favor of the general church.

The opinion, Ga. at 38, quoted the mandatory requirements of the general church law as to trust clauses:

"The Book of Discipline provides for local church property in Section VII. Paragraph 1537 requires that 'title to all real property now owned or hereafter acquired by an unincorporated local church . . . shall be held by and/or coveyed to its duly elected trustees . . .

and their successors in office . . . in trust, nevertheless, for the use and benefit of such local church and The United Methodist Church. Every instrument of conveyance of real estate shall contain the appropriate trust clause as set forth in the Discipline (Par. 1503). Book of Discipline, Ch. 6, § VII, Par. 1537, pp. 477, 478.

"Paragraph 1503 sets out several clauses to be used in deeding church property which establish an express trust in favor of The United Methodist Church. The deeds to Noah's Ark property did not originally contain such clauses, nor were any ever added."

Having failed to enforce paragraph 1537, the general church has persuaded the courts below to utilize paragraph 1503 in determining the intent of the grantor in a deed which the Supreme Court of Georgia construed as vesting title in the local trustees.

The opinion of the Supreme Court of Georgia, Ga. at 38, sets out portions of subparagraph (5) of paragraph 1503 of the *Book of Discipline*; the full text of subparagraph (5) reads:

"5. However, the absence of a trust clause stipulated in §§ 1, 2, 3, or 4 above in deeds and conveyances previously executed shall in no way exclude a local church or church agency from or relieve it of its connectional responsibilities to The United Methodist Church. Nor shall it absolve a local congregation or church agency or Board of Trustees of its responsibility and accountability to The United Methodist Church; *provided* that the intent and desires of the founders and/or the later congregations or Boards of Trustees are shown by any or all of the following indications: (a) the conveyance of the property to the trustees of a local church or agency of any predecessor to The United Methodist Church; (b) the use of the name, customs, and polity of any predecessor to The United Methodist Church in such a way as to be thus known to the community as a part of such denomination; (c) the acceptance of the pastorate of ministers appointed by a bishop or employed by the superintendent of the District or Annual Conference of any predecessor to the United Methodist Church." (Emphasis on "Provided" in opinion and in original).

Paragraph 1503(5) is overreaching in the extreme on the facts here. There is no logical basis for relating acts of successor trustees during a period of some 117 years back to the intent of founders who established the local church in 1852 when property was deeded. The concept of relating acts of persons back to show intent of other persons is wholly without any rational basis. Subparagraph (5) is arbitrary in the extreme. The concept that a trust impressed on local church property can be altered by the intent and desires of its trustees so as to deny the objects of the trust is foreign to the very nature of trusts.

The record does not reflect any indicia of alleged affiliation in 1852, the year of delivery of the deed, or during a substantial number of years thereafter.

When indicia of affiliation did occur, they related to acts of the congregation, and not acts of the trustees. The congregation did not have the power to divert the property from the purpose of the trust. Express rejection of continuing efforts by the general church to enforce paragraph 1537 precludes the finding of contemporaneous implied consent. Any consent to divert the property by the trustees would have constituted an ultra vires act.

In *Presbyterian*, *supra*, US at 449, the Court advised, "Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." In 1969, after the date of the decision by the Court in *Presbyterian*, the congregation ceased affiliation with the general church. The record does not reflect whether or not the congregation was cognizant of *Presbyterian*; in any event, it conformed to the admonition of the Court.

Under all the circumstances of this case the awarding of title by the Supreme Court of Georgia through overreaching non-doctrinal provisions of church law infracts the establishment clause and impairs the obligation of contracts. The writ should be granted to further delineate contours of the establishment clause so as to deny one church, by invoking the protection given to church doctrine, the power to establish itself through non-doctrinal provisions of its own law to the detriment of another church.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of Georgia.

Respectfully Submitted,

PAUL S. WEINER
226 North McDonough Street
P. O. Box 698
Jonesboro, Georgia 30236
(404) 471-8161

Counsel for Petitioner

PAUL McGEE
226 North McDonough Street
P. O. Box 698
Jonesboro, Georgia 30236
(404) 471-8161

Of Counsel for Petitioner

APPENDIX A**IN THE SUPREME COURT OF GEORGIA**

DECIDED: JANUARY 6, 1976

30301 SAM R. CARNES ET AL v. JOHN OWEN SMITH ET AL (114)

HALL, Justice.

This appeal involves a dispute over church property between the local members of the Noah's Ark Methodist, now Independent, Church and the general church, The United Methodist Church. The facts are undisputed. Noah's Ark Methodist Church was established in 1852, when the property on which the church now stands was deeded to the named individuals as "trustees of the Methodist Episcopal Church at Mount Pleasant Academy . . . their Successors in office as such forever in fee simple." From that time until 1969, the local church had continued as a connectional church of The United Methodist Church or its predecessor, the Methodist Episcopal Church. During this period, Noah's Ark had contributed funds to the parent church, had sent delegates to participate in conferences, had accepted pastors assigned to it by the general church, had held itself out as a participating member of the Methodist Church, and had been organized and functioned according to the laws and rules of The United Methodist Church and the church discipline.

The local church's dissatisfaction with the general church stemmed from the refusal of the local bishop and district superintendent to respond to the church's 1961 resolution requesting a full time pastor. The members wished to make Noah's Ark a single rather than two-church charge that shared a pastor with a neighboring congregation. The bishop's refusal was based on the concern that such a small church, consisting of less than one hundred members, would not be able to support a full time pastor financially. The matter continued unresolved until 1969 when the local trustees voted to withdraw from the general church, and submitted a petition to that effect, signed by forty-one church

members, to the Superintendent of the Griffin District. The representatives of The United Methodist Church, though they respected the right of the members to withdraw from the general church, maintained that the local church property remained part of the parent organization to which it was entrusted, and that the new Noah's Ark Methodist Church (Independent) had no right to its use or the use of the local name. However, the church members continued to use the property, and steadfastly refused to allow the superintendent to address them and to accept the new pastor assigned to their charge.

After the sheriff was called to remove the superintendent from the church one Sunday, he promised to allow the courts to resolve the property dispute. Thereafter an equitable petition was filed on behalf of The United Methodist Church by the Griffin district superintendent, the bishop, and others against the trustees of Noah's Ark from appropriating the property and name of the general church. Both parties moved for summary judgment; the trial court granted the motion of the plaintiff United Methodist Church and enjoined the Noah's Ark trustees from any further use of the local property and the local name.

1. The defendant trustees of the Noah's Ark Church have appealed. They claim the court erred in granting the plaintiff's motion for summary judgment and denying their own based on this court's decision in *Presbyterian Church v. Eastern Heights Methodist Church*, 225 Ga. 259 (167 SE2d 658) (1969), cert. denied, 396 US 1041 (1970), where we held there was no longer an implied trust theory in Georgia. The trustees contend that without an implied trust, the property must be awarded to the legal title holders, in this case as in *Presbyterian Church*, the trustees of the local church.

The United Methodist Church, however, relies on the fact that Noah's Ark has been a connectional church from its inception in 1852 and it thus subject to the Book of discipline, the constitution of The United Methodist Church. The discipline makes clear that church property is held by local trustees for the benefit of the general church. *Presbyterian Church*, it argues, merely holds that there is no implied trust arising solely from a connectional church relationship, and

that the property should go to the local trustees only where "there [is] no other basis for a trust in favor of the general church . . ." 225 Ga. at 260.

It is clear and uncontested from the testimony and the law of the church as contained in the Book of Discipline, which is included in the record as an exhibit, that The United Methodist Church is connectional or hierachial in structure. Discipline, ch. 4 at 151; *United Methodist Church v. St. Louis Crossing Independent Methodist Church*, 276 NE2d 916 (Ind. 1971) *Trustees of Peninsula Annual Conference v. Spencer*, 183 A2d 588 (Dela. 1962); *Clay v. Crawford*, 183 SW2d 797 (Ky. 1944). This means that the local church is a part of the whole body of the general church and is subject to the higher authority of the organization and its laws and regulations.

In *Watson v. Jones*, 80 U. S. (13 Wall) 679 (1871), the United States Supreme Court considered a dispute between two factions of a local church as to which group had the right to use the church property. The court ruled, although courts could not inquire into ecclesiastical questions,² but must accept as final the rulings of the highest church judicatory on those matters,³ that the courts were the proper fora for deter-

¹ There are three basic types of church organizations recognized in *Watson v. Jones*, 80 U. S. (13 Wall) 679, 722-23 (1871). "The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization." See, *Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church*, 344 U. S. 94 (1952).

² "A matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of members of the church to the standard of morals required of them." *Watson v. Jones*, *supra* at 733.

³ Absent a showing of fraud, collusion or arbitrariness. *Gonzalez v. Roman Catholic Archbishop*, 280 U. S. 1 (1929).

mining property disputes.⁴ The court held that the disputed church property therefore belonged to the local church members who adhered to the "acknowledged organism by which the body is governed. The minority in choosing to separate themselves into a distinct body, and refusing to recognize the authority of the governing body, can claim no rights in the property from the fact that they had once been members of the church or congregation."⁵ *Watson v. Jones*, supra at 725. By this principle of resolving property disputes as laid down in *Watson*, the law implies a trust upon the local church property for the benefit of the general church where there is a connectional relationship.⁶

⁴ "Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints." *Watson v. Jones*, supra, at 714.

⁵ The controversy before the Court over control of the church property was typical of many that arose in Kentucky and Missouri Presbyterian churches after the General Assembly of the Presbyterian Church declared itself to be anti-slavery — pledging allegiance to President Lincoln and the federal government and espousing the emancipation of slaves.

⁶ Justice Brennan, who wrote the Court's decision in *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Church*, supra, further clarified the standards to be used in his concurring opinion in *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg Inc.*, 396 U. S. 367, 368-70 (1970) (joined by Douglas and Marshall, J.J.). Stressing that the states could adopt any means of settling property disputes that did not involve doctrinal matters, he cautioned that the *Watson* approach was viable, only if the relevant church governing body was easily discernible "without the resolution of doctrinal questions and without extensive inquiry into religious polity." In addition, other 'neutral principles of law,' such as "provisions in deeds or in a denomination's constitution for the reversion of local church property to the general church," could be used, again only as long as no determination of religious questions was involved. 396 U. S. at 370.

The Georgia courts until 1969, however, had taken "the [English] view that such a trust is conditioned upon the general church's adherence to its tenets of faith and practice as existed when the local church affiliated with it, and that an abandonment of, or departure from, such tenets is a diversion from the trust, which the civil courts will prevent." *Presbyterian Church v. Eastern Heights Presbyterian Church*, 224 Ga. 61, 68 (159 SE2d 690) (1968), rev'd 393 U. S. 440 (1969). This court then went on to affirm in *Presbyterian Church* the trial court's judgment granting the church property to the local dissidents based on the jury's finding that the general church had "substantially abandoned" its original tenets.

The United States Supreme Court reversed stating that Georgia's departure-from-doctrine qualifications to the implied trust rule⁷ violated the First Amendment by demanding an inquiry into church doctrine and practice, and that the civil courts must resolve church property ownership by employing only "*neutral principles of law*, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 449 (1969). (Emphasis supplied).

On remand, this court held that if the departure-from-doctrine element could "play no role in any future judicial proceedings,"⁸ the "entire theory must fall."⁹ *Presbyterian Church v. Eastern Heights Presbyterian Church*, 225 Ga. 259, 260 (167 SE2d 658) (1969), cert. denied, 396 U. S. 1041 (1970). The property was awarded to the local churches based

⁷ The Supreme Court reaffirmed the implied trust doctrine of *Watson v. Jones*, however. 393 U. S. at 445.

⁸ 225 Ga. at 260 quoting 393 U. S. at 450.

⁹ "Since Georgia chose to adopt the implied trust theory with this element as a condition this court must assume that it would not have adopted the theory without this mode of protecting the local churches." 225 Ga. at 260.

on the legal title reflected in their respective deeds.¹⁰ "There was no other basis for a trust in favor of the general church, none being created by the deeds on the property, implied under the statutes of this state, (Code §§108-106, 108-107), or required by the constitution of the general church." 225 Ga. at 260. (Emphasis supplied). This court therefore left open the possibility of an implied trust in favor of a general church where factors other than the mere connectional relationship between a local and general church were present.

Reliance on such other factors was generally sanctioned by the United States Supreme Court in Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc., *supra*. Since the Maryland Court of Appeals¹¹ had resolved the property dispute without "inquiry into religious doctrine," there was no violation of the First Amendment; hence, there was no federal question and the appeal was dismissed.

The Maryland opinion, so approved, is thus instructive as to what "neutral principles of law," may appropriately be considered. It is especially so because Maryland, like Georgia

¹⁰ The Eastern Heights Presbyterian Church acquired its property by deed from the Independent Presbyterian Church in 1930, naming as grantee "Eastern Heights Presbyterian Church, a religious corporation." Eastern Heights also held two other tracts: one, designated named individuals as "Trustees of Eastern Heights Presbyterian Church, and their successors in office"; the other, "for the use and benefit of the congregation of the Eastern Heights Presbyterian Church."

The property owned by the Hull Memorial Church named the church itself as grantee, and required that the property "be used as a place of worship by a church of the Presbyterian denomination known as the named church." 225 Ga. 261.

¹¹ The Maryland Court of Appeals had decided this case prior to *Presbyterian Church v. Hull Memorial Church, supra*, on the same grounds, but the Supreme Court remanded the case for further consideration after *Presbyterian Church*. The Maryland court reaffirmed its decision which the Supreme Court then approved. 396 U. S. at 367 n.2.

since the *Presbyterian Church* case, has no implied trust doctrine. Maryland and Virginia eldership of the Church of God v. Church of God at Sharpsburg, Inc., 241 A2d 691 (Md. 1968), remanded 393 U. S. 528, aff'd, 254 A2d 162 (1969), aff'd per curiam, 396 U. S. 367 (1970).

The Sharpsburg case involved competing claims to church property by the general Eldership and two local dissident churches that had been members of the Eldership. The court, in deciding the dispute, looked to the language of the deeds, applicable state statutes regarding religious corporations, the provisions in the Eldership constitution, and the corporate charters of the two local churches. The statutes¹² and Eldership constitutions¹³ did not address the issue of church ownership, but the local charters placed ownership and control in the local congregations.¹⁴ Therefore, the court held that the local churches owned the property.

It is thus apparent that as long as no inquiry is made into religious doctrine, statutes,¹⁵ corporate charters, the language in relevant deeds and the organizational constitutions of the denomination qualify as "neutral principles of law" as required by *Presbyterian Church, supra*. We will consider according to the case law developed above, the language of the deeds; relevant statutes, Code Ann. §§108-106, 108-107 and Code Ann. §§ 22-5507, 22-5508; and the

¹² The statutes generally allowed trustees to own and operate the church property, unless statutes with more specific provisions have been specially enacted for the benefit of a particular denomination. 241 A2d at 696.

¹³ The Eldership constitution only provided for the reversion of local property to the Eldership if the church "becomes extinct or ceases to be." 241 A2d at 700.

¹⁴ The court decided that the Church of God was part congregational and part connectional in structure. 241 A2d at 703.

¹⁵ The general church may also have special laws passed in the state. Maryland and Virginia Eldership of the Church of God v. Church of God of Sharpsburg, 241 A2d 691 (Md. 1968), remanded 393 U. S. 528, aff'd, 254 A2d 162 (1969), aff'd per curiam, 396 U. S. 367 (1970).

general church constitution, the Book of Discipline of The United Methodist Church.¹⁶

As already mentioned, the 1852 deed conveyed the property to named individuals as "Trustees of the Methodist Episcopal Church at Mount Pleasant Academy" and their successors. Therefore, the deeds are materially indistinguishable from those in *Presbyterian Church*.¹⁷

No trust in favor of the general church may be implied under the general trust statutes, Code Ann. 108-106, 108-107, where no funds are donated to purchase and develop the local church property by the general church. *Presbyterian Church*, 225 at 260. However, Code Ann. 22-5507 recognizes and validates deeds conveying land for church purposes according to the limitations set out in the deed and for use "according to the mode of church government or rules of discipline. . . ." Where the conveyance is made to trustees, Code Ann.

22-5508 provides that such trustees hold the church property "subject to the authority of the church or religious society for which they hold the same in trust. . . ."

The statutes thus mandate that the church property be held according to the terms of the church government. Since it is uncontested that the church was a connectional member of The United Methodist Church from its founding in 1852 until the trustees vote of withdrawal in 1969, there is no question that the trustees held the local church subject to The United Methodist Church and its "mode of church government or rules of discipline." Code Ann. 22-5507, 22-5508.

The Book of Discipline provides for local church property in section VII. Paragraph 1537 requires that "title to all real property now owned or hereafter acquired by an unincorporated local church, . . . shall be held by and/or conveyed to its duly elected trustees . . . and their successors in office, . . . in trust, nevertheless, for the use and benefit of such local church and The United Methodist Church. Every instrument of conveyance of real estate shall contain the appropriate trust clause as set forth in the Discipline (Par. 1503)." Book

of Discipline, ch. 6. VII, Par. 1537, p. 477, 478.

Paragraph 1503 sets out several clauses to be used in deeding church property which establish an express trust in favor of The United Methodist Church. The deeds to the Noah's Ark property did not originally contain such clauses, nor were any ever added. However, subparagraph 5 of paragraph 1503 provides that "the absence of a trust clause . . . in deeds and conveyances previously executed shall in no way exclude a local church or church agency from or relieve it of its connectional responsibility and accountability to The United Methodist Church; provided that the intent and desires of the founders . . . are shown by any or all of the following indications: (a) the conveyance of the property to the trustees of a local church or agency of any predecessor to The United Methodist Church; (b) the use of the name, customs, and polity of any predecessor to The United Methodist Church in such a way as to be thus known to the community as a part of such denomination; (c) the acceptance of the pastorate of ministers appointed by a bishop or employed by the superintendent of the District or Annual Conference of any predecessor to The United Methodist Church." Book of Discipline, ch. 6, I, Par. 1503(5), p. 461. Not only one, but all three of these indications are present in this case, as is abundantly clear from the record.

We therefore hold that an implied trust was intended by the founders of the Noah's Ark Methodist Church in favor of The United Methodist Church based on the "neutral principles of law" as set out above. In doing so, we agree with the reasoning of the Indiana Court in its recent decision of *United Methodist Church v. St. Louis Crossing Independent Methodist Church*, 276 NE2d 916, 52 ALR3d 311, 323 (Ind. 1971), where it considered a similar church property dispute. That court said, "a local church if it desires to remain independent of the influence of a parent church body, must maintain this independence in the important aspects of its operation, e.g., polity, name, finances. It cannot, as here, enter a binding relationship with a parent church which has provisions of implied trust in its constitution, by-laws, rules, and other documents pertaining to the control of property, yet deny the existence of such relationship. It does not matter whether such agreement to be bound is memorialized. A local

¹⁶ The Noah's Ark Church is unincorporated so there is no corporate charter to consider.

¹⁷ See note 10, supra.

church cannot prosper by the benefits afforded by the parent, participate in the functioning of that body, yet successfully disclaim affiliation when the parents acts to the apparent disadvantage of the local, so as to shield from equitable or contractual obligation the valuable property acquired by the local church either before or during such affiliation." *Accord*, Ohio Southeast Conference of Evangelical United Brethren Church v. Kruger, 243 NE2d 781 (Ohio 1968).

Thus convinced, we decline to be persuaded by Merryman v. Price, 259 NE2d 883 (Ind.) cert. denied, 401 U. S. 852 (1970), urged by the Noah's Ark church. In that case the Indiana court refused to look to the church discipline to settle a property dispute because it considered the discipline ecclesiastical in nature. Indeed, the Indiana court itself has not followed Merryman, but has distinguished it in the St. Louis Crossing case, *supra*, where it looked to non-ecclesiastical, property portions of the church discipline. The existence and presence in the record of the Book of Discipline, with its provisions on church property also distinguish this case from *Presbyterian Church*, 225 Ga. 259 (1969), cert. denied, 396 U. S. 1041 (1970). We therefore hold that the trial court did not err in granting summary judgment to The United Methodist Church on the issue of ownership of the church property.

2. Noah's Ark Methodist Church (Independent) asserts that the trial court erred in ruling that use of the local church name for their non-connectional organization unlawfully deprived The United Methodist Church and its connectional local church of their identity and in enjoining that use. We affirm the decision of the trial court in enjoining the use of the name Noah's Ark Methodist Church (Independent) by the dissident church members on a motion for summary judgment.

It is well established that a court of equity will enjoin unfair use of the name of another.¹⁸ *Love v. Brothers & Sisters of the*

¹⁸ We expressly decline to rule whether the Uniform Deceptive Trade Practices Act, Code Ann. 106-7 applies here. Also, Code Ann. 106-201 does not apply to unincorporated associations. *Faison v. Adair*, 144 Ga. 797 (87 SE 1081); *Methodist Episcopal Church, South Inc. v. Decell*, 60 Ga. App. 843 (5 SE2d 66) (1939).

Evening Star Society, 120 Ga. 355 (47 SE 951) (1904); *Purcell v. Summers*, 145 F2d 979 (4th Cir. 1944). See Nims, *Unfair Competition and Trademarks* 1. This protection also applies to unincorporated organizations and associations. "An association has a right to adopt a title by which it is to be known, the unauthorized use of which will be restrained by a court of equity." 4 Cyc. 304, and authorities there cited." *Love v. Brothers & Sisters of the Evening Star Society*, *supra* at 355 n. 1. *Accord*, *Faison v. Adair*, 144 Ga. 797 (87 SE 1080) (1915).

In *Faison v. Adair*, *supra*, the court affirmed an injunction granted to the Ancient Arabic Order of the Nobles of the Mystic Shrine against the defendant Ancient Egyptian Arabic Order of the Nobles of the Mystic Shrine of North and South America, both voluntary associations. The standard is set out in that case: "The judge who heard the application for injunction found that the name adopted by the defendants was so similar to that of the plaintiffs that the natural tendency was and would be to confuse and mislead the public, and in consequence was a fraud and injury which the plaintiffs were entitled to enjoin. . . ." *Faison v. Adair*, *supra* at 799.

The local name of a church is "of great value, not only because business [is] carried on and property held in that name, but also because members associated with the name that most sacred of their personal relationships and the holiest of their family traditions." *Purcell v. Summers*, *supra* at 982. And, since "the right to use the name inheres in the institution, not in its members; . . . when they cease to be members of the institution, use by them of the name is misleading and, if injurious¹⁹ to the institution, should be enjoined." *Purcell v. Summers*, *supra* at 987. Thus, the local members in defecting from the established church have given up their right to use the local church name. See, *Grand Lodge Independent, Benevolent and Protective Order of the Elks v. Grand Lodge Independent, Benevolent and Protective Order of the Elks, Inc.*, 50 F2d 860 (4th Cir. 1931); First indepen-

¹⁹ Actual injury need not be shown but only likely injury as a result of the confusion of the public. Nims, *supra* at 313.

dent Missionary Baptist Church of Chosen v. McMillan, 153 So2d 337 (Fla. 1963).

Noah's Ark Methodist Church (Independent), however, argues that the addition of (Independent) to the original name sufficiently distinguishes the new church from both the local Noah's Ark Methodist Church and the connectional organization, The United Methodist Church, while retaining the local identity of the original church. It is this very factor, however, that creates the unfair confusion,²⁰ especially where the new church will be located in the same area as the old. Local residents who desire to become new members, wish to reestablish ties with the original church, or want to donate or leave a bequest to the original church affiliated with the connectional church might easily be misled to the detriment of both of these organizations.

The United Methodist Church presented evidence by affidavit that Noah's Ark Methodist Church has existed since 1852, that the name has always been attractively displayed on the church property and that the church is well known throughout the area as a connectional branch of The United Methodist Church. We find that this uncontested evidence is sufficient to sustain the injunction by summary judgment of the use of the words Noah's Ark Methodist Church (Independent). We therefore affirm the judgment of the court below on this issue. However, we express no opinion as to what name would sufficiently distinguish the new and the old local churches.

The trial court did not err in granting summary judgment to the plaintiffs. Since Noah's Ark obtained no certificate for immediate review on the denial of its motion for summary judgment, we do not consider it here. It is obvious, however, from our ruling here that its denial would have to be affirmed. The judgment of the court below is thus affirmed.

Judgment affirmed. All the Justices concur, except Nichols, C. J., Undercofler, P. J. and Jordan, J. who dissent.

UNDERCOFLER, Presiding Justice, dissenting.

I respectfully dissent to the majority opinion.

It is my opinion that Presbyterian Church in the *United States v. Eastern Heights Presbyterian Church*, 225 Ga. 259 (167 SE2d 658) (1969) abolished the principle which implied a trust upon local church property for the benefit of the general church where there exists a connective form of government. Georgia has adopted what is known as the "formal title" doctrine. Essentially this limits a title inquiry to the relevant deeds and related documents. "Property Rights-Church Property," 52 ALR3d 324, 346. The deed here was delivered in 1852 to trustees for the "Methodist Episcopal Church at Mount Pleasant Academy." There is nothing in this deed or this record to indicate that any trust was established for any beneficiary other than the local church when this deed was delivered or thereafter.

I am authorized to state that Mr. Justine Jordan concurs in this dissent.

²⁰ "The imitation need only be slight if it attaches to what is most salient." *Emory v. Odd Fellows*, 140 Ga. 423 (78 SE 922) (1913).

APPENDIX B**SUPREME COURT OF GEORGIA**

ATLANTA, January 6, 1976

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

Sam R. Carnes et al. v. John Owen Smith et al.

This case came before this court upon an appeal from the Superior Court of Clayton County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur, except Nicholas, C. J., Undercofler, P. J., and Jordan, J., dissent.

BILL OF COSTS, \$30.00

Clerk

**SUPREME COURT OF THE
STATE OF GEORGIA**

CLERK'S OFFICE, ATLANTA 4/19/76

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia, and that Paul S. Weiner paid the above bill of costs.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

APPENDIX C**SUPREME COURT OF GEORGIA**

ATLANTA, January 27, 1976

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

Sam R. Carnes et al. v. John Owen Smith et al.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied. Nichols, C. J., Undercofler, P. J., and Jordan, J., dissent.

Clerk.

**SUPREME COURT OF THE
STATE OF GEORGIA**

CLERK'S OFFICE, ATLANTA, April 19, 1976

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

APPENDIX D

SUPREME COURT OF GEORGIA

ATLANTA, January 30, 1976

The Honorable Supreme Court met pursuant to adjournment.

By Justice Robert H. Hall:

The following direction was given:

Sam R. Carnes et al. v. John Owen Smith et al.

Upon consideration of the motion for a stay of this court's remittitur in order that an appeal or an application for certiorari may be filed in the Supreme Court of the United States to obtain a review of this court's judgment rendered in this case on January 27, 1976, such motion is hereby granted, subject to the following conditions:

The clerk of this court is directed to withhold the transmittal of such remittitur to the trial court for ninety days from the date of this court's judgment, and until the final disposition of the said case by that court; Provided, that promptly upon filing of such appeal or application in the Supreme Court of the United States, the clerk of this court shall be notified thereof in writing and also shall be notified of any judgment of that court denying such application or appeal and of any motion for rehearing, or, if no application or appeal be filed in that court within the said ninety day period or within an authorized extension thereof, the clerk of this court shall be promptly so notified in writing.

Justice

**SUPREME COURT OF THE
STATE OF GEORGIA,
CLERK'S OFFICE, ATLANTA, 4/19/76**

I certify that the above is a true and complete copy of the Court's direction to stay the remittitur.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

APPENDIX E

**MOTION OF APPELLANTS
FOR REHEARING**

COME NOW, the Appellants in the above captioned case, within the time allowed by law, and within ten days from January 6, 1976, the date of rendition of the decision of this Court, and make and file this their Motion of Appellants for Rehearing, and respectfully show to the Court the following:

Examination of the deed reveals that the intent of the grantor was to establish a church independant of the predecessor organizations of the United Methodist Church.

In 1844, the Methodist Episcopal Church separated into two connectional churchs, the Methodist Episcopal Church, and the Methodist Episcopal Church, South. (Complaint Par. 6, R.6-7; Exhibit A, *Discipline*, 10).

The title to the church property was conveyed to named individuals as trustees of the Mehtodist Episcopal Church at Mount Pleasant Academy; the title was *not* conveyed to the named individuals as trustees of the Methodist Episcopal Church, South (R. 330).The fact that the word, "South", does not appear in the deed reveals the grantor's intent. The deed was delivered in 1852, eight years after the formation of the seperate Methodist Episcopal Church, South. The grantor, by not adding the word "South", expressed his intent that the property be used for a church independent of the Methodist Episcopal Church, South. The Brief of Appellees, 14, after relating the fact of the deed, states with apparent implication

"The United Methodist Church, as heretofore related, the 'Methodist Episcopal Church', its name having been changed to 'The Methodidst Church' upon union with the Methodist a060

"The United Methodist Church, as heretofore related, is the 'Methodist Episcopal Church', its name having been changed to 'The Methodist Church' upon union with the Methodist Episcopal Church, South and The Methodist Protestant Church and later, in 1966, to

'The United Methodist Church', upon union with The Evangelical United Brethren Church."

Appellees claim title through the Methodist Episcopal Church, South until the 1939 union which formed the Methodist Church. It follows that any implication that the words "Methodist Episcopal Church at Mount Pleasant Academy" conveyed title to the United Methodist Church, through the Methodist Church, through the Methodist Episcopal Church, South is without support since Appellees claim title originally through the Methodist Episcopal Church, South, and the deed did *not* convey title to named individuals as trustees of the Methodist Episcopal Church, South.

* * *

But even if the *Book of Discipline* is considered, the result is contrary to that stated in the opinion.

Paragraph 1503(5), *Book of Discipline* ch. 6, § I, Par. 1503(5) p. 461, reads in full:

"5. However the absence of a trust clause stipulated in §§ 1, 2, 3, or 4 above in deeds and conveyances previously executed shall in no way exclude a local church or church agency from or relieve it of its connectional responsibilities to The United Methodist Church. Nor shall it absolve a local congregation or church agency or Board of Trustees of its responsibility and accountability to The United Methodist Church; *provided* that the intent and desires of the founders *and/or* the later congregations or Boards of Trustees are shown by any or all of the following indications: (a) the conveyance of the property to the trustees of a local church or agency of any predecessor to The United Methodist Church; (b) the use of the name, customs, and polity of any predecessor to The United Methodist Church in such a way as to be thus known to the community as a part of such denomination; (c) the acceptance of the pastorate of ministers appointed by a bishop or employed by the superintendent of the District or Annual Conference of any predecessor to The United Methodist Church."

(Emphasis on "provided" in original; emphasis on "and/or" supplied)

The "and/or" construction should be strictly construed against Appellees under all the facts and circumstances of this case to mean the conjunctive; if not, then the contract construction should be applied:

"The term 'and/or' as ordinarily used (in a contract) is a deliberate amphibology; it is purposely ambiguous. Its sole usefulness lies in its self-evident equivocality . . . The practical construction placed by the parties on the term, and the circumstance surrounding the execution of the agreement, may be of aid in determining what interpretation will best accord with the equities of the case' 17 AM. Jur 2d 698, Contracts, § 283."

Bank Building & Equipment Corporation of America v. Georgia State Bank, 132 Ga. App. 762, 765 (209 SE2d 82) (1974).

Here, the intent and desires of the founders and the later congregations was shown in the deed and the practices and usages of the church to remain independent. Any acquiesces in the discipline of the church, if any, could not relate back so as to affect the intent of the grantor.

The application of the doctrine of relation back to inform the intent of grantor, would destroy the contractual relationship between the grantor, would ~~destroy~~ the church. A decision that the Appellees have title to the church property would impair the obligation of contracts and infract the Constitution of the United States.

It is of importance that the record contains no evidence of any provision similar to Par. 1503(5), prior to 1968 thus, the Appellees have failed to prove that acquiesce, if any, by the trustees, in the discipline of organized methodism gives rise to any implication favorable to Appellees claim of title prior to 1968. Appellees have utterly failed to carry the burden imposed on them on a motion for summary judgment.

CONCLUSION

For the above and foregoing reasons, it is urged that this Court grant a rehearing, and render decision and judgment reversing the judgment of the Superior Court of Clayton County.